Responses to "A Proposal to Improve Rabbinic Decision Making for Serious Medical Problems"

Response: Shimon Glick, MD and Alan Jotkowitz, MD
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The authors bring the attention of the readers to an interesting and serious problem. But we have serious reservations about their approach.

If the paper were entitled "A proposal to improve physician decision-making for serious medical problems," we would consider the proposal to be appropriate and useful.

Decisions about whether to undergo medical treatments are rarely halakhic decisions and should not be the subject for *poskim,* any more than physicians should be consulted for halakhic dilemmas. The increasing tendency in Orthodox Jewish circles to consult rabbis for decisions in areas in which they have no training or competence is to be decried as a distortion of halakha as well as of common sense. Unfortunately all too many rabbis render medical opinions that are misinformed and misleading. The suggestion that the rabbis should now consult not only physicians but also epidemiologists is misguided. In the example provided about hormone replacement therapy, those *poskim* will find significant differences among epidemiologists no less than among physicians. If a rabbi is consulted about such treatment, he should explain to the inquirer that the subject is not a halakhic matter and should refer the individual to a competent physician.

There have been, and there still are, unique rabbinic figures, such as the late Rabbi Twersky in the US and Rav Firer in Israel who are widely consulted for advice, to whom to turn for complicated diseases. And these rabbis somehow have developed significant expertise in medical areas. But in this capacity they are not acting as *poskim*, but as sort of special social workers guiding patients to the appropriate professional in complicated cases. However,

notwithstanding the holy work these individuals perform, there is danger in what they do. They are not regulated, have no formal training, and rely on word of mouth for many of their referrals. They are justly regarded as saintly individuals by patients and many physicians. Unfortunately there are others less skilled and less talented who are trying to emulate them. In addition, what will prevent less scrupulous individuals from trying to duplicate what they do and from being influenced improperly through financial incentives, coming either directly or through donations to their favorite charitable institutions? Perhaps even more disturbing, there are now rabbinic figures who are influencing the care of patients not based on scientific criteria but instead relying on mystical traditions. It is difficult for the public to distinguish between these different kinds of medical advice, all being given by rabbinic figures. We believe strongly that medical expertise should be left to physicians and halakhic and spiritual guidance to rabbis. It does not enhance the stature of rabbis to provide guidance outside their expertise, and it behooves rabbis to act in a way that is more likely to bring credit to Judaism.

Two of the leading rabbinic figures of the past century were frequently consulted about medical decisions. Rav Shlomo Zalman Auerbach *zt"l* generally did not agree to give a medical opinion but rather referred the inquirer to his/her physician. The late Rebbe of Lubavich, when consulted, usually advised the individual to seek out a physician who is a personal friend but has no vested interest in the decision, and to ask that physician's advice. Neither assumed the role of *posek* in medical areas.

There is, however, an area where rabbinic knowledge of new developments in medical decision making, particularly the use of evidence-based medicine, might be useful. Traditionally, rabbis when making halakhic decisions in medical areas have relied on expert opinion. At the end of the last century, medicine embarked on a revolution, in which expert opinion has been replaced, or at least supplemented, by reliance on sounder scientific data. The well-done randomized clinical trial or meta-analysis, rather than the expert, may have the "final word." A *posek*, for example, who is asked whether a pregnant woman may fast on Yom Kippur, should use as

medical consultants physicians who base their opinions on medical data rather than on their personal expert opinion alone.

The authors would perform a much greater public service if they tried to educate both the patients and the rabbis about which questions are subjects for rabbinic opinion and which for medical opinion—a healthy and appropriate division of labor. ☙

Response: Kenneth Prager, M.D., F.A.C.P.

Professor of Clinical Medicine,
Division of Pulmonary, Allergy and Critical Care Medicine
Director, Clinical Ethics
Chairman, Medical Ethics Committee

I have a central question about your paper: what is the appropriate role of *poskim* in answering medical questions put to them?

If their role is to apply halacha to the medical query, then that is not referred to in your article. Someone reading the article would not see any difference between the *posek* and a physician to whom a patient comes for a second opinion.

In other words, I think your paper misses an essential point: it fails to relate to the reader what unique qualities and expertise a *posek* brings to a medical question. The examples you give in your paper seem to me to be straightforward medical questions: should this patient have cardiac surgery or not? How does halacha enter the equation? Most readers would assume that this is a strictly medical question. If the benefits of surgery significantly outweigh the risks, then the surgery should be performed, or at least the physician should discuss the pros and cons of the operation with the patient and her family and let them decide.

As for new procedures without a track record of success or failure: here again I don't see how a *posek* is preferable to several well-informed medical specialists in helping the patient to make a decision. Is the *posek* simply a substitute for a patient advocate who can help the patient sort out the choices and review the medical data? If so, how does halacha impact on this decision? Your paper fails to mention this critical point in my opinion.

Of course there is a role for an epidemiologist in all these questions, but one assumes that medical decisions are usually made on

the basis of prevalent medical practice and on knowledge of the respected medical literature, in which the peer reviewers for the journals should have eliminated articles that do not stand up to critical epidemiologic analysis. In addition, decisions need to be made on the basis of good clinical judgment that takes into account issues that are not strictly medical, such as the patient's lifestyle, tolerance for risk, values, family situation, etc. It is unclear from the article how a *posek* would bring light to these questions.

It would be most unfortunate if one had to rely on rabbis, or any other clergy for that matter, to evaluate the correctness and accuracy of medical recommendations regarding strictly medical issues. It would imply a failure of the physicians dealing with the patient to have up-to-date and correct knowledge of the medical literature, including epidemiologic input into the question raised. If, in fact, there is a problem with physicians giving accurate medical advice, including sound epidemiologic evaluation, then I don't see why *poskim* are required to correct the problem. I would think that a panel of expert physicians would do a far better job.

You give the examples of medical decisions that have to be made regarding women taking HRT and when to remove colon cancer metastases from the lung in an attempt at cure. Do we need *poskim* to help patients with these decisions, or the right doctors? I believe the latter. Rabbis can be helpful in steering patients to the right physicians. I don't see the halachic expertise of the posek as entering into these decisions.

Is there a role for *poskim* in dealing with medical questions? Of course—but these are questions relating to halacha and not to the correct operation or drug to take. *Poskim* should be asked questions relating to whether a feeding tube should be placed; to whether life support should be withheld or withdrawn; to whether artificial insemination may be employed to enable a single woman to have a child, and from whom the sperm should be obtained, etc.

I am well aware of a number of rabbis who specialize in doctor referrals. They are quite good at this and have spent time winnowing out the good doctors from the mediocre. But these rabbis are not functioning in the capacity of a *posek*, but rather with the expertise of a top- notch referral service.

I hope that these comments have been helpful. ☙

Response: Anonymous

The author is a prominent medical halakhic authority.

General comments:

1. You did not define at all the halakhic parameters of rabbinic involvement in medical treatment. I suggest for your consideration the following insights:

   a) According to Jewish law:
   לא יתעסק ברפואה אלא אם כן הוא בקי, ולא יהא שם גדול ממנו, שאם לא כן, הרי זה שופך דמים [שולחן ערוך יורה דעה סימן שלו סעיף א].
   That means that only a qualified physician should deal with medical treatment.

   b) The role of Rabbis is stated in the following ways:
   חולה בתוך ביתו, ילך אצל החכם, ויבקש עליו רחמים [ב"ב קטז א]. יש מי שכתב, שהכוונה לחכם שבעירו [רמ"א יו"ד שלה יא. וראה בהסבר הדבר בשו"ת שבט הלוי ח"ג סי' קסג אות א]; ויש מי שכתב, שמי שיש לו חולה בביתו ילך אצל חכם, וילמד ממנו דרכי התפילות ויבקש רחמים, והיינו שמבקש הרחמים הוא הקרוב עצמו, אלא שלומד מהחכם דרכי הרחמים [מאירי ב"ב שם].
   That means the basic role of rabbis is to pray for and bless the patient prior to a medical procedure.

   c) Only in highly risky medical procedures, when a patient might die unless a very risky operation will be performed, is there an opinion that the חכם שבעיר has to give his approval to the procedure [שו"ת שבות יעקב ח"ג סי' עה].

   d) Certain medical procedures involve inherent halakhic problems, e.g., abortion for a fetal defect; cosmetic surgery; non-kosher product for illnesses, etc. In these situations the added important role of a rabbi is to act as a *posek*, by deciding whether or not the procedure should be done at all or in a modified way. In most instances there is no role of *psak* involved in the Rabbi's intervention.

   e) Accordingly, the term *posek* referred to in your article is, in my view, used inappropriately for the purposes of this article. All cases discussed in the article have nothing to do with a *psak*-halakhah as such, except for the issue of risks vs. benefits. Indeed, this is a halakhic question, but in most in-

stances it is viewed as a factual matter, as is also strongly stressed in this article. More importantly, in most instances patients turn to rabbis and rebbes who, with all due respect, are not *poskim* in the deep meaning of the word. Those rabbis and rebbes serve more in the capacity of advisers and giving blessings than of *poskim*. Hence, in my opinion you should not use the term *posek* in your article, and should stress that the rabbis and rebbes are commonly approached to help in medical decision-making as wise and righteous people, but their advice ought to be based on the best medical facts.

2) I understand the motivation of this article, yet I think there are two points to be made:
   a) Even before consulting with an epidemiologist, it should be stressed that rabbis ought to consult with the treating physician and with physicians who are experts in the specific field they are being asked about. Unfortunately there are rabbis and rebbes who listen to the family and give their advice based on inadequate and inaccurate information.
   b) I am not sure how practical your suggestion might be in the real world. The precious few medical epidemiologists around may be all but unavailable to consult with rabbis. Also, your proposal for a bank of information seems to be problematic, since this bank itself will undergo changes and modifications, and once again you may need an expert for each particular case.

3) It seems to me that additional examples may clarify your point even better. For example: How to relate to bilateral prophylactic mastectomy in BRCA positive women? When to insert a PEG in a terminally ill patient? These are examples of truly controversial issues, and perhaps a medical epidemiologist could make some sense and order in them. ☙

Response: Gedalia Dov Schwartz

Av Beth Din
Beth Din Zedek Ecclesiastical Judicature of the
Chicago Rabbinical Council

I was astounded by your description of how some physicians are not fully up to date in their practice of medicine. I therefore fully and enthusiastically support your viewpoint that we need to improve the process of rabbinic decision-making for serious medical problems. It is critical that rabbis receive the most current information available, and that the information be presented accurately and with complete clarity.

It is pertinent to note, however, that patients who are faced with a serious medical problem—such as undergoing surgery that poses significant risks—rarely ask for my guidance. More frequently I am asked about issues that relate to end-of-life, and that do not require an updated review of the medical literature. I also wonder how your ideas would be implemented. For example, if a patient's physician recommends a certain procedure, it is likely that he will be offended if I tell him that in order to provide my input I first need to ask an epidemiologist for an analytical review of the relevant medical information.

In conclusion, your paper alerts us to a problem that many individuals are not aware of. I enthusiastically support your bringing it to the forefront. When a rabbi is asked for guidance in making a decision regarding a serious medical problem, he needs to have current, relevant information. I hope that your paper leads to a discussion that will ultimately raise the level of this decision-making process in a manner that is feasible and acceptable to all concerned parties. ☙

Response: Aaron Twerski, J.D.

Brooklyn Law School
Irwin and Jill Cohen Professor of Law

I find your paper interesting and challenging. I have developed considerable familiarity with epidemiological studies and have used them in several law review articles. You are correct that epidemiological studies are an important part of the mix in deciding whether to undertake a given medical procedure. There are several possibilities. One is to provide seminars for the *poskim* to raise their level of understanding as to their meaning. That will make them more savvy advisors by allowing them to question doctors about the studies. However, this supposes that they will have constant access to the studies. In New York, where the quality of medical care is very good among the top physicians, I would hope that the doctors are fully informed and include the studies in their calculus as to whether to recommend any given treatment. I must say that I am troubled somewhat by relying on the latest epidemiological study to guide medical decisions. My experience in looking at how even highly sophisticated judges with a pretty good grasp of epidemiology have struggled with the data gives me little confidence that rabbis will be successful.

In using the data, so much depends on the integrity of the study and the multitude of variables and confounders that affect results. My reservations notwithstanding, your suggestion that a team of physicians and epidemiologists could serve as a resource in helping halachic decision-making is worth pursuing. How the *poskim* will use the information is beyond my expertise. They may have to develop halachic norms for how to utilize them. But that can't happen until they are will informed. ☙

Response: Binyomin Weiss

Av Beth Din
Montreal, Canada

I have read your paper carefully. While you raise an important issue, I do feel that your proposal does not apply in most cases. There are three basic situations in which a *rav* is approached for a medical-related matter.

First, people approach a *rav* when there are *halachic* considerations associated with a medical procedure. Examples can be whether a gynecological procedure would render a woman *niddah*, or whether a urologic procedure involves the *issurim* of *sirrus* or *ptzua dak*a. A similar situation would be with treatments that are performed on *Shabbos* and *Yom Tov*. Often, the *Rav* will need to consult an expert physician in order to obtain all the facts needed for the *halachic* determination; e.g., for gynecologic procedures, it would be essential to have a description of the instruments that would be used, and to know exactly how they would be used. In such cases there is no need for an epidemiologist to undertake a medical literature search in order to update the status of the field.

Second, patients may ask a *rav* for a *bracha* or to say *tehilim* for them when they are about to undergo a clinical procedure that has significantly serious health risks. Clearly there is no role for an epidemiologist in such cases.

The third situation is the least common: i.e., when patients approach a *rav* for guidance in deciding among various possible options of treatment for a serious medical condition. In cases where the *rav* does not have the required training or experience, he needs to seek expert opinions. It is in such rare cases, I believe, that the skills of an epidemiologist to critically read, review and assess the medical literature could complement and enhance the information provided by a physician—so that critical decisions are based on the most up-to-date data regarding the procedure's risks and benefits that are relevant to a particular patient.

While having a "bank" of experts could greatly facilitate and improve the current process of making decisions regarding the third situation described above, the logistics of establishing such a "bank" seems problematic. It is also important to note that the need for a

credible assessment of the various medical options also applies to the public at large and should not be limited to *rabbinic* consultations. Often the only option available to patients who are faced with these fateful decisions is to search the Web and then to hope that the information they find is accurate. Your suggestion, if implemented, would be extremely helpful whether or not *rabbinic* consultations are involved, but I doubt that the medical establishment would welcome it. ☙

The Authors Reply

We appreciate the thoughtful and comprehensive feedback, which greatly enhances the description of the problem this paper addresses.

Our paper's main objective had been to raise awareness of the problems that can be associated with medical decisions made within a *halakhic* context, and to propose one possible approach for addressing these problems. We specifically address situations when a *rav* is asked for his *halakhic* opinion regarding the treatment that a physician has recommended. We do not recommend that the rav replace the physician, but address those situations where the patient would like the rav's *psak* regarding whether the proposed therapeutic recommendation (or non-recommendation) is in line with *halakhah*.

The physicians' responses express deep concern about decisions often made by *rabbonim*—decisions that they hold would most appropriately be handled by physicians. We do not disagree with this—that is not the purpose or suggestion of our paper. While responding *rabbonim* do not express this concern in their feedback about our paper, they acknowledge that they often consult physicians. *This is a subject that our article addresses.* Ultimately, as recommended by those who provided feedback to our proposal, the role of the *rav* in medical decision making needs to be more clearly defined. Of note, when acting within his role, each *morah horo'a* needs to weigh the facts according to his own understanding. Therefore, given similar circumstances, heterogeneity in the *psakim* of different *rabbonim* is expected and appropriate.

The feedback to the paper shows that we have a fragmented and less-than-optimal process to address medical problems, and this has motivated us to take another step forward. We now present an idea that would begin to integrate all the fragments into one cohesive system. This process of developing an effective system for handling medical decisions within the *halakhic* framework must be an evolving one; and because we are dealing within a *halakhic* framework, this particular proposal is limited to the Orthodox Jewish community. *Halakhic* and secular criteria for medical decisions differ. As an

example, the medical concept of autonomy may lead secular physicians to allow, or even to vigorously try to persuade, end-of-life actions, such as withholding a feeding tube, which a *rav* might hold to be inconsistent with *halakhah*. Another conflict between secular opinions and *halakhah* might arise in the case of women with first degree relatives (e.g., mother or sister) who have had breast cancer, and who themselves have a genetic marker, such as the BRCA gene, placing them at increased risk. Secular vs. *halakhic* approaches may or may not differ greatly regarding reproductive issues, appropriate risk taking, *chavalah* (damaging oneself) and *sirus* (removal of reproductive organs).

As a potential first step in addressing some of the concerns for the *rav* that we have raised, a rabbinical organization might wish to assemble a panel of clinical and scientific experts with various areas of expertise that could be available to its membership as consultants as needed. The objective would be to create a system that could easily be navigated and readily accessible. A cohesive organization of experts would maximize the likelihood of providing the *rav* with the correct medical input to provide expert *halakhic pesak*.

We acknowledge that putting these ideas on paper is simple; executing them is challenging. There are many practical challenges that need to be addressed in order to pursue the development of a consistent, comprehensive, unified, methodical system to deal with *halakhic* medical problems faced by Orthodox rabbonim. Some challenges were highlighted by those who provided feedback to our proposal. For example, Professor Twerski expressed concerns regarding cases of conflicting epidemiologic findings. Such cases are not uncommon, and when they do occur, epidemiologists and physicians need to assess all the available evidence and, to the best of their ability, clarify the possible sources of these differences, and how these differences might be relevant for a particular patient facing a decision. Often, the verdict may not yet be in. While striving for perfection is the goal, it cannot always be realized. Decisions must be made, and deciding not to explore the evidence because it could be inconsistent is unacceptable.

We would also like to comment on Dr. Prager's assertion that"...one assumes that medical decisions are usually made on the basis of prevalent medical practice and on knowledge of the res-

pected medical literature, in which the peer reviewers for the journals should have eliminated articles that do not stand up to critical epidemiologic analysis." Prevalent medical practice is not always optimal, and peer reviewers may miss important points and paper weaknesses. The weaknesses of many papers, in spite of peer review, frequently become evident during journal clubs; not all peer-reviewers are equally competent. Where definitive medical advice is not available, the *rav* needs a resource to help him *pasken* for the patients.

In summary, it is our impression that *rabbonim* are sometimes faced with critical questions from their community, many of which might be life-threatening, and they do not always have a reliable expert clinician or epidemiologist on hand to help them ascertain what the facts are so that they can *pasken* appropriately. Certainly, the treating physician is the most appropriate place for the *rav* to turn to base his *pesak*, but there are times when that is insufficient or impossible, in which cases the *rav* will likely turn to colleagues or other clinical friends for assistance. Having a central source of reliable expert clinicians and epidemiologists would facilitate correct *pesak halakhah* in these difficult situations. ☙